

find that the defendants are wholly to blame and accordingly I give judgment for the plaintiff on liability.

On damages, I will deal with them in the order in which submissions have been made.

First there is general damages. I will not go through the medical reports on the plaintiff. It is sufficient to say that the plaintiff has suffered tragic injuries. He is now a quadriplegic. He is totally incapable of taking care of himself. As Mr. Mohamed bin Abdullah rightly says the plaintiff is completely dependent on others for all his personal needs. Even if a fly were to sit on his nose, he is utterly helpless. It is beyond dispute that his condition will get worse in the near future.

Mr. Mohamed bin Abdullah has shown me a table of facts and figures where in England, speaking broadly, damages for quadriplegics are about double that of paraplegics. Reported cases show, says Mr. Abdullah, that damages for paraplegics are in the region of \$90,000 to \$100,000. In Suit No. 3541 of 1982, Abdul Wahab Ghows J. gave a plaintiff who was paralysed from the waist down general damages of \$100,000. There is, however, the case of *Soh Kheng Seng v. Leong Chee Hoong & Anor.*⁽¹⁾ where Rajah J. in 1982 gave the plaintiff, a quadriplegic, \$110,000 for loss of amenities, pain and suffering. Mr. Mohamed bin Abdullah submits that that is on the low side. I accept that submission. In this case, I award for general damages, that is to say, for pain and suffering, and loss of amenities, \$180,000.

On the second head, for loss of expectation of life, counsel are agreed on the quantum of \$6,500.

The third is costs for future nursing care. At present the plaintiff is in the Chronic Sick Unit of Woodbridge Hospital. There is evidence that when the plaintiff receives his compensation, he will be discharged from Woodbridge Hospital. Having regard to his disabilities, I am satisfied that he will have to be taken care of in a private nursing home. Such a home is available. Mr. Jagjit Singh has given evidence that he runs a home for patients like the plaintiff. He is prepared to take the plaintiff. He has given evidence of expenses the plaintiff will have to defray to stay in the nursing home. Mr. Mohamed bin Abdullah submits that the plaintiff's expectation of life would be about nine years. This is something which is very difficult to decide. Even doctors cannot say. Miss Loke for the defendants has, I think, side-stepped the issue by saying that

A the plaintiff be given a lump sum of \$10,000. It is totally unacceptable to me. I must be reasonable and do the best I can. I will give the plaintiff six years and put the cost of nursing in the monthly sum of \$1,200. That works out to \$122,400.

B The fourth is for loss of future earnings. Again, as for expectation of life, I will use the multiplier of six, and having considered the earning capacity and the depressed conditions prevailing in the shipping world, I will use the multiplicand of \$350 per month. It gives the sum of \$25,200.

C As for the last head, actual loss of earnings, I accept the figure of \$270 per month. Counsel are agreed that it is for six years. The amount is \$19,440.

D There is an agreed sum on other special damages of \$6,973.

So, there will be judgment for the plaintiff for \$360,513 and costs. I make no order for interest; in doing so I follow the unreported decision cited to me of Chua J.*

E

Claim allowed.

Solicitors: *Murphy & Dunbar; Cooma Lau & Loh & M. Karthigesu.*

F * See *Tominam bte. Tukimin v. Toh Kai Chup* [1985] 2 M.L.J. 345.

G

TI SIAN KI v. OVERSEA-CHINESE BANKING CORPORATION LIMITED

[A.C.J. (Chua J.) August 2, 1985]

H

[Singapore — District Court Appeal No. 55 of 1984]

Landlord and Tenant — Parting of possession by tenant — Claim for possession by landlord — Whether statutory tenant — Control of Rent Act (Cap. 266), s. 27(a).

I This is an appeal against the decision of the District Court giving judgment for the respondents who had claimed possession of certain premises. The only issue for determination by the lower court is whether the appellant and the 2nd defendant are still in possession of the said premises. If not, they ceased to be statutory tenants and lose the protection of the Control of Rent Act. The 2nd defendant and the 3rd defendants did not appeal. On appeal by the appellant:

Held, dismissing the appeal: there is a preponderance of evidence for the trial judge to come to the conclusion that the appellant and the 2nd defendant had parted with possession of the said premises to the 3rd defendants.

Case referred to:

- (1) *Lam Kee Ying v. Lam Shes Tong* [1974] 2 M.L.J. 23; [1975] A.C. 274.

DISTRICT COURT APPEAL.

Tommy Neo for the appellant.

Kirpal Singh for the respondents.

Cur. Adv. Vult.

Chua J. : This is an appeal against the decision of the District Court giving judgment for the respondents who had claimed for possession of the premises known as No. 223-1 Syed Alwi Road, Singapore ("the said premises"), and for mesne profits on the ground that the appellant and Chong Yee Yuen *alias* Chong Mok Kin ("the 2nd defendant") had given up possession of the said premises to Hock Lian Plastic Container Manufacturer Private Limited ("the 3rd defendants") and that the 3rd defendants are trespassers unlawfully in occupation.

The short facts are these. The respondents are the owners of the said premises which were let to one Chua Ah Kiam on a monthly tenancy. The respondents obtained judgment against Chua Ah Kiam (in District Court Summons 4703 of 1967) on May 17, 1968, for possession of the said premises but the judgment was held not to be enforceable against the other three defendants, the tenants of Chua Ah Kiam. The appellant and the 2nd defendant were partners of a firm called Hock Lian Manufacture Co. one of the said other three defendants in Summons No. 4703 of 1967. By operation of law the appellant and the 2nd defendant became the respondents' statutory tenants. The appellant incorporated the 3rd defendants in December 1977. He is the manager and one of two directors and holding the majority shares. The other director is his wife.

In his defence the appellant contends that the said premises are subject to the provisions of the Control of Rent Act (Cap. 266) ("the Act") and avers that he is still in occupation and possession of the said premises and thus is protected by the Act.

The appellant and the 2nd defendant deny that they have ceased to be statutory tenants of the respondents.

A The 3rd defendants deny that they are unlawfully in occupation and claim protection of the Act.

B The only issue for the determination of the District Court is whether the appellant and the 2nd defendant are still in possession of the said premises. If not, they ceased to be statutory tenants and lose the protection of the Act.

C The District Court came to the conclusion "that by 1979 at the latest the firm of Hock Lian Manufacture Co. of which the (appellant) and the 2nd defendant were partners had ceased its purported business operations altogether at the said premises and it was in fact and in law no longer in possession of the said premises within the meaning of section 27(a) of the Control of Rent Act (Cap. 266)." The District Court found "a preponderance of evidence in this case pointing to the conclusion that the partnership of Hock Lian Manufacture Company had parted with possession of the said premises to the 3rd defendant company and had thereby abandoned its statutory tenancy shortly after 1972."

F The District Court gave judgment for the respondents against the appellant and the 2nd defendant on the ground that they had ceased to remain as statutory tenants by reason of section 27(a) of the Act and against the 3rd defendants as trespassers unlawfully in occupation.

The 2nd defendant and the 3rd defendants did not appeal.

G The trial judge's conclusions were based on the following evidence:

- H " (a) The 2nd defendant's own evidence that he left the premises and the partnership of Hock Lian Manufacture Company 1972 and since then had received no accounts of the partnership or asked for any. He then set up his own separate business at Jalan Sultan under the name of Applied Corporation.
- I (b) The accounts of the 3rd defendant Company (AB11 to AB13) showed that rents for the said premises was paid by and debited from the accounts of the 3rd defendant Company.
- (c) Two telephone lines are maintained at the same premises under the name of the 3rd defendant Company (see AB9). No telephone lines were maintained at the said premises under the name of Hock Lian Manufacture Company.
- (d) The 1st and 2nd defendants did not produce any accounts, books, invoices, bills, purchase orders relating to Hock Lian Manufacture Company to show that it is doing any business on the said premises.

- (e) Following a collapse of part of the first floor concrete, the 3rd defendant's solicitors wrote to the plaintiffs claiming damages (AB8). The plaintiffs replied (AB7) asking how the 3rd defendant came to be in occupation but there was no reply to this.
- (f) There is no bank account in name of partnership firm.
- (g) It is with bank account of 3rd defendant company that materials are bought for manufacture at the said premises."

Counsel for the appellant submits that the trial judge erred in his findings of facts in that the findings were not supported by the evidence, or, if supported by the evidence, the wrong weight was placed on them or that he drew erroneous inferences from them.

Sir Harry Gibbs in *Lam Kee Ying Sdn. Bhd. v. Lam Shes & Anor.*,⁽¹⁾ in delivering the judgment of the Board said:

"However, the question whether the first respondent has parted with possession must depend upon all the facts and circumstances of the present case which in their Lordships' opinion are distinguishable from those of the cases cited. Some of the evidence — as to the erection of the signboard, the transfer of the electricity, water supply and telephone and the issue of receipts, bills and invoices in the name of the second respondent — is equivocal and is quite consistent with a conclusion that although the second respondent occupied the premises the first respondent retained possession. However the fact that the second respondent tendered its own cheque in payment of the rent is some evidence that the second respondent regarded itself, and was regarded by the first respondent, as having possession of the premises."

The first respondent in that case was the lessee of the premises and he was carrying on a partnership business on the premises. The first respondent and his partners incorporated a company (the second respondent) which acquired as a going concern the business of the partnership and carried on business on the premises.

In the present case the evidence is clear that the payment of the rents was by the 3rd defendants which was reflected in the accounts of the 3rd defendants. The appellant contended before the trial judge that he himself had been paying the rent in cash and debited it in the accounts of the 3rd defendants on the advice of his accountant to reduce the tax liability of the 3rd defendants. I am unable to say that the trial judge was wrong in rejecting the contention of the appellant.

There is no doubt that the keeping of the signboard of Hock Lian Manufacture Company at the said premises, the maintenance of PUB accounts and the Certificate of Registration of a Factory

A and the renewal of Certificate of Registration by the partnership firm and the fact that the 3rd defendants did not put up their signboard at the said premises are ploys employed by the appellant to substantiate possession as a statutory tenant. The appellant would have succeeded in misleading the respondents had the 3rd defendants not made a claim against the respondents for damages caused to the 3rd defendants' properties at the said premises and thereby unwittingly informing the respondents of their presence on the said premises.

C It is clear that since 1972 the partnership of Hock Lian Manufacture Company had ceased operating altogether at the said premises when the 2nd defendant admitted that he left to cut losses.

D The trial judge had overwhelming material on the evidence on which he properly arrived at the decision which he reached on facts.

E There is a preponderance of evidence for the trial judge to come to the conclusion that the appellant and the 2nd defendant had parted with possession of the said premises to the 3rd defendants.

The appeal is dismissed with costs.

Appeal dismissed.

F Solicitors: Tommy Neo; Kirpal Singh & Co.

G CHOO SI SENG v. LEE BOON SAI

[O.C.J. (Thean J.) September 30, 1985]

[Singapore — Suit No. 226 of 1981]

H *Contract — Document acknowledging receipt of \$500 for purchase of flat at \$132,500 — Document signed by defendant — Sale and Purchase agreement expressed to be made between parties within one week — Whether document constituted contract — Claim for specific performance of agreement and damages for breach of contract.*

I The defendant gave a broker, Lee an "option" to procure a purchaser for the said premises within one week, failing which the "option" would become null and void. In consequence Lee introduced the plaintiff as the purchaser to the defendant. The plaintiff negotiated with the defendant on the purchase of the premises at Clemenceau Avenue and the sale price was ultimately agreed at \$132,500. A sum of \$500 was paid to the defendant, and the plaintiff drafted a document (P.1) which was signed only by the